

by adding the following new paragraph (b)(2):

§ 1.133 Institution of proceedings.

* * * * *

(b) * * *

(2) Any person determined by the Chief, PACA Branch, pursuant to 7 CFR 47.47 *et seq.* to have been responsibly connected within the meaning of 7 U.S.C. 499a(9) to a licensee who is subject or potentially subject to license suspension or revocation as the result of an alleged violation of 7 U.S.C. 499b or as provided in 7 U.S.C. 499g(d) shall be entitled to institute a proceeding under this section by filing with the Hearing Clerk a petition for review of such determination

* * * * *

4. Section 1.135 would be amended as follows:

a. In the section heading, by adding the words "or petition for review" after the word "complaint" and before the period.

b. By designating the text of current § 1.135 as paragraph (a), and by adding the paragraph heading "*Complaint.*" immediately after the designation of paragraph (a).

c. By adding the follow paragraph (b):

§ 1.135 Contents of complaint.

* * * * *

(b) *Petition for Review.* The Petition for Review of responsibly connected status shall describe briefly and clearly the determination sought to be reviewed and shall include a brief statement of the factual and legal matters that the petitioner believes warrant the reversal of the determination

§ 1.136 [Amended]

5. Section 1.136 would be amended as follows:

In paragraph (a), by adding after the last sentence the words "As response to a petition for review of responsibly connected status, the Chief, PACA Branch, shall within ten days after service by the Hearing Clerk of a petition for review, file with the Hearing Clerk a certified copy of the agency record upon which the Chief, PACA Branch, made the determination that the individual was responsibly connected to a licensee under the perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, and such agency record shall become part of the record in the review proceeding."

6. Section 1.137 would be revised to read as follows:

§ 1.137. Amendment of complaint, petition for review, or answer; joinder of related matters.

(a) Amendment. At any time prior to the filing of a motion for hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with consent of the parties, or as authorized by the Judge upon a showing of good cause.

(b) Joinder. Upon application of the Administrator made at any time, the judge shall consolidate for hearing with any proceeding brought to suspend or revoke a license granted under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, any petitions for review of determination of status by the Chief, PACA Branch, that individuals are responsibly connected, within the meaning of 7 U.S.C. 499a(9), to the licensee during the period of the alleged violations. In any case in which there is no pending proceeding to suspend or revoke the license of a licensee issued under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, but there have been filed more than one petition for review of determination of responsible connection to the same licensee, such petitions for review shall be consolidated for hearing upon motion by the Administrator.

7. Section 1.141 would be amended as follows:

a. By adding after the first sentence of paragraph (a) the following additional sentence: "A petition for review shall be deemed a request for a hearing."

b. By designating the text of current paragraph (e) as paragraph (e)(1), and by adding the following new paragraph (e)(2):

§ 1.141 Procedure for hearing.

* * * * *

(e) * * *

(2) If the petitioner in the case of a Petition for Review of a determination of responsibly connected status within the meaning of 7 U.S.C. 499a(9), having been duly notified, fails to appear at the hearing without good cause, such petitioner shall be deemed to have waived his right to a hearing and to have voluntarily withdrawn his petition for review.

* * * * *

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

8. The authority citation for part 47 would continue to read follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(8)(xiii), 2.50 (a)(8)(xiii).

9. Section 47.47 would be revised to read as follows:

§ 47.47 Additional definitions.

The following definitions, which are in addition to those in 7 CFR 47.2 (a) through (h), shall be applicable to proceedings under 7 CFR 47.47 through 47.49.

(a) *Chief* means the Chief of the PACA Branch, or any officer or employee to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated by the Chief, to act in such capacity.

(b) *PACA Branch* means the PACA Branch of the Division.

(c) *Petition for review* means the document filed requesting review by an Administrative Law Judge of the Chief's determination.

§ 47.49 [Amended]

10. Section 47.49 would be amended as follows:

a. The words "Regulatory Branch" would be removed each time they occur and the words "PACA Branch" would be added in their place.

b. Paragraph (d) of § 47.49 would be amended by removing all words appearing after "may file" and adding in their place the words "with the Hearing Clerk, pursuant to § 1.130 *et seq.* of this chapter, a petition for review of the determination."

c. Paragraphs (e) and (f) would be removed.

§ 47.50 through 47.68 [Removed]

11. Sections 47.50 through 47.68 would be removed.

Done in Washington, D.C. this 20th day of June, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95-15817 Filed 6-30-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 95-14]

RIN 1557-AB19

Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes, and Bank Secrecy Act Compliance

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its Regulation Review Program, is proposing to revise its regulation on minimum security devices and procedures for banks, reports of crimes and suspected crimes, and Bank Secrecy Act (BSA) compliance. This proposal implements a new interagency suspicious activity referral process and updates and clarifies various portions of the underlying reporting regulation. The proposal also reduces substantially the burden on banks in reporting suspicious activities while enhancing access to such information by the Federal law enforcement agencies, the Federal financial institutions supervisory agencies, and Treasury.

DATES: Comments must be received by September 1, 1995.

ADDRESSES: Comments should be sent to: Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219, Attention Docket No. 95-14; or FAX number 202-874-5274. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Robert S. Pasley, Assistant Director, or Neil M. Robinson, Senior Attorney, Enforcement and Compliance Division, (202/874-4800), or Daniel Cooke, Attorney, Legislative and Regulatory Activities Division (202/874-5090).

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions supervisory agencies (the Agencies)¹ and the Department of the Treasury² (Treasury) are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any known or suspected violation of a Federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions, which will be the subject of regulations and other guidance to be issued by Treasury, can include transactions that the bank suspects involve funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, otherwise violated the money laundering statutes (18 U.S.C. 1956 and 1957), were potentially designed to evade the reporting or recordkeeping requirements of the BSA

(31 U.S.C. 5311 through 5330), and transactions that the bank believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money laundering, and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry. The Agencies and Federal law enforcement agencies need to receive timely and detailed information regarding suspected criminal activity to determine whether investigations, administrative actions, or criminal prosecutions are warranted.

An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many Federal agencies, including the Agencies and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and Federal and State law enforcement agencies, and improves the Federal government's response to white collar crime in financial institutions. It is under the auspices of the BFWG that the revisions to this regulation and the reporting requirements are being made.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on banks, and to eliminate confusion associated with the current duplicative reporting of suspicious financial transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to implement the procedures for reporting suspicious financial transactions by banks following the enactment of the Annunzio-Wylie Anti-Money Laundering Act of 1992. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious financial transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and FinCEN developed a new report form for reporting known or suspected Federal criminal law violations and suspicious financial transactions. The new form is designated the Suspicious Activity Report (SAR). The SAR is a simplified and shortened version of its predecessors. The new referral process and the SAR reduce the burden on national banks for reporting known or suspected violations and suspicious

financial transactions. The Agencies anticipate that the new process will be operational by October 1995.

Proposal

The OCC proposes to revise 12 CFR part 21 as part of its Regulation Review Program by updating and clarifying the current rule governing the filing of criminal referral reports, expanding the rule to cover suspicious financial transactions, implementing the new SAR, and eliminating current confusing and overly burdensome reporting requirements. This action should improve reporting of known or suspected violations and suspicious financial transactions relating to Federally insured financial institutions while providing uniform data for entry into the new interagency computer database. The OCC expects that each of the other Agencies will be making substantially similar changes contemporaneously.

Subpart B—Suspicious Activity Reports

The principal proposed changes to the OCC's current criminal referral reporting rules are discussed below in the summary of the proposed rule's paragraphs. Of particular note are the following: (1) Raising the mandatory reporting thresholds for criminal offenses, thereby reducing unnecessary reporting burdens; (2) filing only one form with a single repository, rather than submitting multiple copies with several Federal law enforcement and the Agencies, thereby further reducing reporting burdens; and (3) melding the criminal referral and suspicious financial transactions reporting requirements of the Agencies and Treasury into one uniform reporting system, thereby eliminating duplicative referrals.

The subpart heading has been changed to conform to the name on the SAR. The current subpart is titled "Reports of Crimes and Suspected Crimes." The proposed subpart heading, "Suspicious Activity Reports," conforms to the name of the report.

Section 21.11(a) Purpose and Scope

The proposal clarifies the scope of the current rule. Under the proposal, the SAR replaces the various criminal referral forms that the Agencies currently require banks to file; and a bank also will file a SAR instead of a CTR to report a suspicious financial transaction.³

³ The BSA requires all financial institutions to file CTRs in accordance with the Department of the Treasury's implementing regulations (31 CFR part 103). Part 103 requires a national bank to file a CTR

¹ The Federal financial institutions supervisory agencies are the OCC, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

² Through its Financial Crimes Enforcement Network (FinCEN).

Combining suspicious financial transaction reporting and criminal referral reporting should reduce confusion, increase the accuracy and efficiency of reporting, and reduce the burden on banks in reporting known or suspected violations, including suspicious financial transactions.

Section 21.11(b) Definitions

Proposed § 21.11(b) defines the following terms: "FinCEN," "institution-affiliated party," "instructions," "known or suspected violation," and "SAR." The definitions should make the rule easier to interpret and apply.

In particular, the definition of a "known or suspected violation" refers to any matter for which a national bank has a basis to believe that a violation of any Federal criminal statute has occurred, has been attempted, is occurring, or may occur, coupled with a basis to believe that a national bank was an actual or potential victim of the criminal violation, involved in, or used to facilitate the criminal violation. The definition supplants current § 21.11(i), which explains the term "suspected."

Section 21.11(c) Reports Required

Proposed § 21.11(c), which replaces current § 21.11(b), clarifies and expands the provision that requires a bank to file a completed SAR. This provision raises the dollar thresholds that trigger a filing requirement. It also modifies the scope of events that a national bank must report by using the new term "known, or suspected violation," which is defined at § 21.11(b)(4), and by requiring that a national bank file a SAR to report a suspicious financial transaction.

Under the current rule, the OCC requires a bank to file a criminal referral form with many different Federal agencies. The proposal, which replaces all other requirements for filing criminal referrals and suspicious financial transactions, requires a bank to file only a single SAR at one location, rather than the multiple copies of the criminal referral form that must now be filed with various Federal agencies.

Under proposed § 21.11(c), a national bank effectively files a SAR with all appropriate Federal law enforcement agencies by sending a single copy of the SAR to FinCEN, whose address will be printed on the SAR.

whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the bank, under these new requirements, will file both a CTR (reporting the currency transaction) and a SAR (reporting the suspicious criminal aspect of the transaction). If a currency transaction equals or is below \$10,000 but is suspicious, the bank will only file a SAR.

FinCEN will input the information contained on the SARs into a newly created database that FinCEN will maintain. This process meets the regulatory requirement that a bank refer any known or suspected criminal violation to the various Federal law enforcement agencies. The database will enhance Federal law enforcement and supervisory agencies' ability to track, investigate, and prosecute individuals suspected of violating Federal criminal law.

This change ensures that all SARs are placed in the database at FinCEN and that the information is made available on computer to the appropriate law enforcement and supervisory agencies as quickly as possible. This change will reduce the filing burdens of national banks.

The proposal removes § 21.11(b)(1), which now requires national banks to report any mysterious disappearance or unexplained shortage of bank funds, because it would be redundant in light of proposed § 21.11(c)(3). In instances where criminal activity is suspected in connection with any disappearance or shortage of bank funds, § 21.11(c)(3) requires a national bank to file a SAR.

The proposal modifies current § 21.11(b)(2), which requires reporting of known or suspected criminal activity involving bank insiders. The proposal replaces current § 21.11(b)(2) with 21.11(c)(1) and describes suspects who are bank personnel more precisely. Specifically, the proposal replaces "responsible bank personnel" with "directors, officers, employees, agents, or other institution-affiliated parties." The proposal, however, does not change the requirement that a bank file a SAR, regardless of the dollar amount involved, whenever it has a substantial basis for believing that a bank insider has violated a Federal criminal statute.

The proposal modifies current § 21.11(b)(3), which requires reporting of known or suspected criminal activity when a bank has a substantial basis for identifying a non-insider suspect where bank funds or other assets involve or aggregate \$1,000 or more. Proposed § 21.11(c)(2), which replaces current § 21.11(b)(3), raises the reporting threshold to \$5,000.

The proposal also modifies current § 21.11(b)(4), which requires banks to report any known or suspected criminal violation involving \$5,000 or more where the bank has no substantial basis for identifying a suspect. Specifically, proposed § 21.11(c)(3), which replaces current § 21.11(b)(4), raises the dollar reporting threshold from \$5,000 to \$25,000.

Proposed § 21.11(c)(4) requires a national bank to report any financial transaction, regardless of the dollar amount, that: (1) the bank suspects involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957); (2) the bank suspects was potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330); or (3) the bank believes to be suspicious for any reason.

Section 21.11(d) Time for Reporting

Proposed § 21.11(d), which replaces current § 21.11(c), sets forth the time requirements a bank must meet when filing a SAR. The proposal does not substantively change the current requirements.

Under current § 21.11(e), "Manner of Reporting," a bank may file the appropriate criminal referral form in several ways, including submitting a photocopy or facsimile of the appropriate form. Under the proposal, a bank may file a SAR by photocopy and also by magnetic means, such as by a computer disk. However, FinCEN will not be able to receive SARs by facsimile machine. In the future, the OCC anticipates that a bank will be able to file a SAR electronically.

The Agencies, working with FinCEN, are developing computer software to assist banks in preparing and filing SARs. The software will allow a bank to complete a SAR, to save the SAR on its computers, and to print a hard copy of the SAR for its own records. The computer software will also enable a bank to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The OCC will make the software available to all national banks. A bank, of course, may complete and file a SAR using a printed form, without using this software, if it so desires.

Because the permitted methods of filing the SAR may change, the OCC has removed current § 21.11(e). The permissible methods of filing the SAR will be stated in the instructions to the SAR.

Section 21.11(e) Reports to State and Local Authorities

Proposed § 21.11(e), which replaces current § 21.11(d), modifies the scope of this provision slightly. Proposed § 21.11(e) encourages national banks to file SARs with State and local law enforcement agencies where appropriate. Proposed § 21.11(e)

removes the unnecessary reference to Federal law.

Section 21.11(f) Retention of Records

Proposed § 21.11(f) requires a bank to retain a copy of the SAR and the original of any related documentation relating to a SAR for a period of ten years. The current rule is silent on this issue. However, the current criminal referral forms require a bank to submit copies of all related documentation when it files a criminal referral.

The new SAR reduces this burden by eliminating altogether the requirement to submit underlying documentation in connection with a criminal referral. Instead, the proposal requires that the documentation be identified and treated as filed with the SAR and that the bank maintain the documentation, along with a copy of the SAR, for ten years from the submission date. This time frame corresponds with the statutes of limitations for most Federal criminal statutes involving financial institutions.

This approach ensures that Federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue an administrative action by requiring banks to preserve underlying documentation for ten years.

Section 21.11(g) Exemptions

Proposed § 21.11(g), which replaces current § 21.11(f), does not substantively revise this provision.

Section 21.11(h) Notification of the Board of Directors

Proposed § 21.11(h), which replaces current § 21.11(g), reduces the burden

the current rule places on boards of directors to review criminal referrals. Under the current rule, each national bank must have procedures that ensure that the bank's board of directors is notified of each criminal referral before the next board meeting.

The proposal does not require a bank to have specific procedures for notifying its board of directors of a SAR. In addition, the proposal permits the management of the bank to notify either the board of directors or a committee of directors or executive officers designated by the board to receive notice of the filing of a SAR.

The OCC intends that each national bank maintain appropriate mechanisms to ensure that its board of directors can be informed promptly of SARs when appropriate. However, the OCC recognizes that board review of all SAR filings is impracticable in some cases. Therefore, under the proposal, the OCC gives each bank discretion to establish reporting systems appropriate for the particular institution.

The proposal also ensures, however, that if the bank elects to provide notice to a committee rather than the entire board, the bank may not give notice of a SAR filing to any director or officer who is a suspect in the known or suspected violation. The proposal also requires management to notify the entire board of directors, except the suspect, when an executive officer or director is a suspect.

Section 21.11(i) Compliance

The proposal changes the heading of the paragraph from "Penalties" to "Compliance" to reflect better the range of informal and formal supervisory

actions available to the Agencies. The proposal clarifies that the OCC treats a national bank's failure to comply with reporting requirements like any other violation of law or regulation, which may result in supervisory actions, including enforcement actions. The current rule, at § 21.11(h) (*Penalties*), appears to set a standard for penalties (willful failure to file or careless disregard in filing reports), that is inconsistent with the applicable statutory standard for violation of an agency regulation. This proposed change conforms the OCC's rules with the rules of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

Section 21.11(j) Obtaining the SAR

Proposed § 21.11(j) states that SARs may be obtained from the appropriate OCC District Office at the address listed in 12 CFR part 4. The current rule does not contain a comparable instruction.

Section 21.11(k) Confidentiality of SARs

The proposal preserves the confidential nature of criminal referral reports by stating that a SAR and the information contained in a SAR are confidential.

Comments

The OCC invites public comment on all aspects of this proposal.

DERIVATION TABLE FOR 12 CFR PART 21

This table directs readers to the provisions of the current 12 CFR part 21.11 on which the revised 12 CFR part 21.11 is based.

Revised provision	Current provision	Comments
§ 21.11(a)	§ 21.11(a)	Modified.
§ 21.11(b)(1)	- - -	Added.
§ 21.11(b)(2)	- - -	Added.
§ 21.11(b)(3)	- - -	Added.
§ 21.11(b)(4)	Derived in part from § 21.11(i)	Added.
§ 21.11(b)(5)	- - -	Added.
§ 21.11(c)(1)	§ 21.11(b)(2)	Modified.
§ 21.11(c)(2)	§ 21.11(b)(3)	Modified.
§ 21.11(c)(3)	§ 21.11(b)(1) & (4)	Modified.
§ 21.11(c)(4)	Derived in part from the OCC's current criminal referral forms ..	Added.
§ 21.11(d)(1)	§ 21.11(c)(1) & (3)	Modified.
§ 21.11(d)(2)	§ 21.11(c)(2)	Modified.
§ 21.11(e)	§ 21.11(d)	Modified.
§ 21.11(f)	- - -	Added.
§ 21.11(g)(1)	§ 21.11(f)(1)	Modified.
§ 21.11(g)(2)	§ 21.11(f)(2)	Modified.
§ 21.11(h)(1)	§ 21.11(g)	Modified.
§ 21.11(h)(2)	- - -	Added.
§ 21.11(i)	§ 21.11(h)	Modified.
§ 21.11(j)	- - -	Added.
§ 21.11(k)	- - -	Added.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for making criminal referrals and has no material impact on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (PRA) (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget (OMB), Paperwork Reduction Project (1557-0180), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557-0180), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information in this proposed rule is limited to the retention of records and is found in 12 CFR 21.11(f), which requires national banks to retain copies of all documentation supporting a SAR for ten years. The SAR will be submitted to OMB separately for PRA review. The OCC requires banks to retain this information to ensure that law enforcement and supervisory agencies have access to the documentation necessary to prosecute a violation or pursue an administrative action. The likely respondents are banks.

Estimated total annual recordkeeping burden: 5,400 hours.

The estimated annual burden per recordkeeper varies from less than one hour to 1,300 burden hours, depending on individual circumstances, with an average of 1.8 hours.

Estimated number of recordkeepers: 3,000.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a

Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that it is not required to prepare a written statement under section 202 and has concluded that, on balance, this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 12 CFR Part 21

Bank Secrecy Act, Check kiting, Criminal referrals, Criminal transactions, Currency, Defalcations, Embezzlement, Insider abuse, Money laundering, National banks, Reporting and recordkeeping requirements, Security measures, Theft.

Authority and Issuance

For the reasons set out in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

1. The heading for part 21 is revised as set forth above.

2. The authority citation for part 21 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881-1884, and 3401-3422.

3. Subpart B of part 21 is revised to read as follows:

Subpart B—Reports of Suspicious Activities

§ 21.11 Suspicious Activity Report.

(a) *Purpose and scope.* This section ensures that national banks file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious financial transaction. This section applies to all national banks as well as any Federal branches and agencies of foreign banks licensed or chartered by the OCC.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that

term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

(3) *Instructions* means the instructions on the SAR.

(4) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a Federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a national bank was an actual or potential victim of the criminal violation, involved in, or used to facilitate the criminal violation.

(5) *SAR* means a Suspicious Activity Report.

(c) *SARs required.* A national bank shall file a SAR with the appropriate Federal law enforcement agencies and Treasury and in accordance with the Instructions, by sending a completed SAR to FinCEN in the following circumstances:

(1) Whenever the national bank detects a known or suspected violation of Federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(2) Whenever the national bank detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the national bank (before reimbursement or recovery) aggregating \$5,000 or more, and the bank has a substantial basis for identifying a possible suspect or group of suspects, where none of the suspects are included in paragraph (c)(1) of this section;

(3) Whenever the national bank detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the national bank (before reimbursement or recovery) aggregating \$25,000 or more, and the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Whenever a financial transaction is conducted, or attempted, at the national bank and:

(i) The bank suspects that the transaction involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957);

(ii) The bank suspects that the transaction was potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (31 U.S.C. 5311 through 5330) or regulations issued thereunder; or

(iii) The bank believes that the transaction was suspicious for any reason.

(d) *Time for reporting.*—(1) *Generally.* A national bank shall file the SAR required by paragraph (c) of this section within 30 calendar days after the date of initial detection of an act described in paragraph (c) of this section, and, in situations involving violations requiring immediate attention, such as when a reportable violation is on-going, the financial institution shall immediately notify, by telephone, the appropriate law enforcement authority in addition to filing a timely SAR.

(2) *No suspect identified.* If no suspect was identified on the date of detection of an act described in paragraph (c) of this section, the national bank may delay filing a SAR for an additional 30 calendar days after identification of a suspect, but in no case may a national bank delay filing a SAR more than 60 calendar days after the date of detecting an act described in paragraph (c) of this section.

(e) *Reports to State and local authorities.* A national bank is encouraged to file a copy of the SAR with State and local law enforcement agencies where appropriate.

(f) *Retention of records.* A national bank shall maintain a copy of any SAR filed and the original of any related documentation for a period of ten years from the date of filing the SAR, unless the OCC informs the bank in writing that the bank may discard the materials sooner. A national bank shall make all supporting documentation available to appropriate law enforcement agencies upon request. Supporting documentation shall be identified and treated as filed with the SAR.

(g) *Exemptions.* (1) A bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(h) *Notification to board of directors.*—(1) *Generally.* Whenever a national bank files a SAR pursuant to this section, the management of the bank shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice.

(2) *Suspect is a director or executive officer.* If the bank files the SAR pursuant to paragraph (c) of this section and the suspect is a director or executive officer, the bank may not notify the suspect, pursuant to 31 U.S.C.

5318(g)(2), but shall notify all directors who are not suspects.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the Instructions may subject the national bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory actions including enforcement actions.

(j) *Obtaining SARs.* A national bank may obtain SARs and the Instructions from the appropriate OCC District Office listed in 12 CFR part 4.

(k) *Confidentiality of SARs.* SARs are confidential. Any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the information citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both.

Dated: June 27, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, and 225

[Regulations H, K, and Y; Docket No. R-0885]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is proposing to revise its regulations on reporting of suspicious activities by the domestic and foreign banking organizations supervised by the Federal Reserve, including the reporting of suspicious financial transactions such as suspected violations of the Bank Secrecy Act (BSA). As proposed, these rules implement a new interagency suspicious activity referral process. The rules also reduce substantially the burden on banking organizations in reporting suspicious activities while enhancing access to such information by the Federal law enforcement agencies, the Federal financial institutions supervisory agencies and the Department of the Treasury.

DATES: Comments must be received on or before September 1, 1995.

ADDRESSES: Comments should refer to Docket No. R-0885, and may be mailed to William W. Wiles, Secretary, Board of

Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT:

Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, (202) 452-2620, or Richard A. Small, Special Counsel, Division of Banking Supervision and Regulation, (202) 452-5235; for the hearing impaired only contact Dorothea Thompson, Telecommunication Device for the Deaf, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions supervisory agencies (the Agencies)¹ and the Department of the Treasury (the Treasury)² are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any known or suspected violation of a Federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions, which will be the subject of regulations and other guidance to be issued by the Treasury, can include transactions that the banking organization suspects involved funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, in any way violated the Federal money laundering statutes (18 U.S.C. 1956 and 1957), were potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330), and transactions that the bank believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money

¹ The Federal financial institutions supervisory agencies are the Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

² Through Treasury's Financial Crimes Enforcement Network (FinCEN).